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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 4:08CR3067 |
| |) | |
| v. |) | |
| |) | |
| GARY ZIERKE JR., |) | MEMORANDUM |
| |) | AND ORDER |
| Defendant. |) | |
| |) | |

IT IS ORDERED that the motion (filing no. 309) to vacate under 28 U.S.C. § 2255 based upon the *Johnson* decision is denied and dismissed with prejudice. No certificate of appealability has been or will be issued. The Federal Public Defender is relieved of all further responsibility in representing Zierke. A separate judgment will be issued.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge